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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 13

Application Number: 09/489,655
Filing Date: January 24, 2000
Appellant(s): DASKAL, BERNARD

Charles R. Macedo
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 October 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that

Art Unit: 3761

there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1 and 5-7 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,801,494	Datta et al.	01-1989
5,188,625	Van Iten et al.	02-1993

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 5-7 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 8.

Art Unit: 3761

Claims 1 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al. (4,801,494). Datta discloses the claimed invention with the exception of a dark colored topsheet.

Datta discloses an absorbent pad comprising an absorbent 30 and a permeable cover 10, as shown in figure 2. The cover 10 is formed from a fibrous material, the fiber being provided with a colorant, as described in column 3, lines 39-48. The colors disclosed by Datta are pastels such as peach and pink, but examples 1-5 show these relatively light colors as effectively masking stains caused by blood and discharge.

The light colors disclosed by Datta effectively perform the same purpose as the dark colors of the claimed invention. It would therefore have been obvious to one of ordinary skill in the art at the time of invention to make the cover 10 of Datta in the colors of the instant invention.

Claims 1 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Iten et al. (5,188,625). Van Iten discloses the claimed invention with the exception of a dark colored topsheet.

Van Iten discloses a sanitary napkin comprising an absorbent 188, a fluid permeable cover 184, and an impermeable baffle 186, as shown in figure 17. The cover 184 includes two layers, the first of which, layer 192, is comprised of a nonwoven web. This nonwoven web may be selectively colored, with preferred colors including blue or green, as described in column 11, lines 6-23. The purpose of this is to mask stains caused by menstrual fluids.

Art Unit: 3761

The preferred colors disclosed by Van Iten effectively perform the same purpose as the dark colors of the claimed invention. It would therefore have been obvious to one of ordinary skill in the art at the time of invention to make the cover 184 of Van Iten in the colors of the instant claims as said individual would have readily recognized that many different colors could be selected and utilized to satisfy the desired result of visual masking of stains during the use of the sanitary product.

(11) Response to Argument

In response to appellant's argument that the purpose the present invention is not to mask stains with the darkly colored topsheet, but relates instead to the Rabbinic Decree concerning *Niddah*, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). While it may not be obvious to one of ordinary skill in the art at the time of invention to construct a sanitary napkin with a darkly colored topsheet for reasons relating to the Rabbinic Decree concerning *Niddah*, it would still be obvious for reasons relating to masking stains.

Van Iten et al. (5,188,625) disclose a topsheet colored for the purpose of masking stains, and further discloses preferring the colors blue or green, which are colors that may be dark shades. Substituting these dark colors with either black, brown, or red would be obvious to one of ordinary skill in the art, as these and many other similar colors would, like the colors disclosed by Van Iten et al., mask stains.

Art Unit: 3761

Datta et al. (4,801,494) also disclose a topsheet colored for the purpose of masking stains, but disclose lighter shades such as pastels. It would likewise be obvious to one of ordinary skill in the art to substitute black, brown, or red as these colors would also mask stains.

Datta et al. (4,801,494) and Van Iten et al. (5,188,625) therefore do not teach away from the use of black, brown, or red colored topsheets, since their purpose in coloring the topsheet does not relate to the Rabbinic Decree concerning *Niddah*, but rather is to mask stains. Datta et al. and Van Iten et al. teach one of ordinary skill in the art that coloring a topsheet will mask stains, and from this teaching it would be obvious to one of ordinary skill in the art to color a topsheet black, brown, or red.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 3761

Respectfully submitted,

C. Lynne Anderson
September 29, 2003

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